STATE OF MAINE
PENOBSCOT, ss

SUPERIOR COURT
DOCKET NO._____

NICOLE and BLAINE DEMONT on behalf of their minor daughter, J.D. Plaintiffs, v. RSU #34 Defendant.	))))))))))	COMPLAINT

NOW COMES Plaintiff Nicole Demont on behalf of her minor daughter, J.D. and, through counsel submits the following Complaint against Defendant RSU #34.

PARTIES

1. Plaintiffs Nicole and Blaine Demont are residents of the Town of Alton, County of Penobscot, Maine. Plaintiffs' minor daughter, J.D. is a 14-year old student at Old Town High School which operates within RSU #34. At the time of the events referenced in this Complaint, J.D. was a student in eighth grade and ninth grade. J.D. was diagnosed with epilepsy at age four and has been eligible to receive special education and related services since early elementary school. Her Individual Education Plan (IEP) lists "Other Health Impaired" as her disability.

2. Defendant Regional School Unit #34 (RSU #34) is a public educational institution serving students in the towns of Alton, Bradley, and Old Town, Maine. A Regional School Unit, as defined by 20-A M.R.S.A. § 1(24-B), means an "RSU" is a state-approved organizational structure of school administration for a particular region of the state.

STATEMENT OF FACTS

3. At the end of J.D.'s seventh grade year (2009-2010), Plaintiffs provided RSU #34 with a written recommendation from J.D.'s treating neurologist, Dr. Morrison, setting forth a plan for responding to a grand mal seizure which included injecting Midazolam, a liquid anti-seizure medication, into J.D.'s mouth. The plan did not require an injection into the soft tissue of J.D.'s mouth but a relatively simple procedure in which the school nurse or a school administrator or staffer would "squirt" the medication into J.D.'s mouth via plastic syringe.

4. At the annual meeting to address J.D.'s Individualized Education Plan ("IEP") in May 2010, the IEP Team, which included Plaintiffs, discussed the new seizure treatment plan (the "Plan"). The IEP Team, including RSU #34 administrators, agreed to implement the Plan.

5. During the late spring or early summer of 2010, the school nurse informed Plaintiffs that the district was unable to comply with the Plan. It was Plaintiffs' understanding that RSU #34 was unable to comply with the Plan because (1) school policy prohibited use of syringes without more specific authorizations, and (2) RSU #34 felt it required more information and guidance from Dr. Morrison.

6. In October 2010, Plaintiffs provided RSU #34 with more specific information and all required authorizations from Plaintiffs and Dr. Morrison. After providing the information, Plaintiffs assumed that the Plan would be implemented according to Dr. Morrison's recommendations and the IEP would be modified to reflect the incorporation of the Plan. However, neither the Plan nor the IEP were changed.

7. Plaintiffs first learned that the Plan and IEP were not changed at J.D.'s Annual IEP Meeting in April 2011. When Plaintiffs questioned why the changes had not been made, the school nurse told Plaintiffs that RSU #34 was "working on it". The school nurse did not provide

a response to Plaintiffs' questions as to why they were not alerted to the fact that RSU #34 did not incorporate Dr. Morrison's recommendations into the Plan.

8. Unfortunately, J.D. experienced a seizure cluster (3 or more seizures within 24 hours) in mid to late May 2011, toward the end of her 8th grade year.

9. RSU #34 failed to follow the Plan. The school did not have J.D.'s Midazolam and syringes stored at the school and did not call 911 when the seizure lasted more than 3 minutes.

10. Fortunately for J.D., her grandparents were notified of the episode and arrived in time to administer Midazolam to address the seizures.

11. Following this incident, Plaintiffs became extremely concerned that RSU #34 was unable to ensure the safety of their daughter at school or during school-related activities.

12. Throughout the summer of 2011, Plaintiffs continued to work with the school nurse, Dr. Morrison, and RSU #34 officials to address the situation and modify the Plan and IEP.

13. At the request of RSU #34, Dr. Morrison wrote another seizure treatment plan on September 20, 2011.[1] Plaintiffs provided a copy of this to the school nurse. RSU #34 failed to implement Dr. Morrison's recommendations.

14. Unfortunately, J.D. experienced another seizure cluster while at Old Town High School (her freshman year) on October 24, 2011.

15. RSU #34 again failed to implement Dr. Morrison's recommendations. This time, over 35 minutes had elapsed before J.D. was treated. As in May 2011, 911 was never called. Instead, J.D.'s grandmother was called again to the school and she administered the medication.

16. On November 22, Plaintiffs and other RSU #34 staff attended a special IEP Team meeting during which the health plan was finally modified to comply with Dr. Morrison's Plan.

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[1] There was no material difference between Dr. Morrison's earlier recommendations and the 9/20/11 Plan.

COUNT I
Disability Discrimination
Rehabilitation Act (29 U.S.C. § 794)

17. Plaintiffs reallege Paragraphs 1-16 and incorporates them herein by reference.

18. Section 504 of the Rehabilitation Act provides that "no otherwise qualified individual with a disability...shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

19. Based on her diagnosis of epilepsy, J.D. is a qualified individual with a disability. She is entitled to reasonable accommodations that will enable her to have meaningful access to the benefits of a public education.

20. Upon information and belief, Defendant, a public school unit, receives federal financial assistance.

21. Defendant failed without justification to carry out a Plan designed by J.D.'s physician to administer medication at the onset of a seizure. The purpose of the Plan was to ensure J.D. would be protected in the event of a seizure during the school day. Without the availability of timely administration of medication, J.D. is not safe at school during the school day. In order to have meaningful access to the benefits of a public education, J.D. needs to have this particular health plan in place.

22. By the above-described actions, Defendant unlawfully excluded J.D. from participation in, denied her the benefits of, or subjected her to discrimination under a program or activity receiving federal financial assistance solely by reason of her disability and failed to provide reasonable accommodations requested by Plaintiffs.

23. Defendant's failure to timely administer J.D.'s medication proximately caused injuries sustained by J.D. and her parents.

WHEREFORE, Plaintiffs demand judgment against Defendant for such damages as shall be reasonable and such legal and equitable relief as the Court may deem just, including an award of reasonable attorneys fees pursuant to 29 U.S.C. § 794, together with interest and costs.

COUNT II
Disability Discrimination
Title II of the Americans With Disabilities Act, as Amended (42 U.S.C. § 12132 (2008))

24. Plaintiffs re-allege Paragraphs 1-23 and incorporate them herein by reference.

25. Title II of the Americans with Disabilities Act (ADA), as amended, provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

26. Plaintiffs' minor daughter, J.D. is a qualified individual with a disability and at all material times hereto was qualified to participate in or receive the benefits of public school programs or activities, including but not limited to the provision of reasonable accommodations based on her disability.

27. By their above-described actions, Defendant has unlawfully excluded Plaintiffs' minor daughter from participation in and denied her the benefits of the benefits of the services, programs, or activities of a public entity solely by reason of her disability.

28. Defendant failed to provide the reasonable accommodations requested by Plaintiffs that would permit their minor daughter to safely attend school.

29. J.D. has been injured as a direct result of Defendants' acts or omissions.

WHEREFORE, Plaintiffs demand judgment against Defendant for such damages as shall be reasonable and such legal and equitable relief as the Court may deem just, including an award of reasonable attorneys fees pursuant to 42 U.S.C. § 12133, with interest and costs.

COUNT III
Negligence

30. Plaintiffs re-allege Paragraphs 1-29 and incorporate them herein by reference.

31. The Maine Tort Claims Act, which ordinarily bars private tort actions against a public entity, provides that "*except as otherwise expressly provided by statute*, all governmental entities shall be immune from suit on any and all tort claims seeking recovery of damages." 14 M.R.S.A. § 8103 (emphasis supplied).[2]

32. 20-A M.R.S.A. § 6403(A) requires each Maine school board to appoint at least one school nurse for the school administrative unit. The school nurse is responsible for supervising and coordinating the "health services" and "health-related activities" for the school administrative unit. (20-A M.R.S.A. § 6043 (A) (2)).

33. In addition, 20-A M.R.S.A. § 4009 creates civil liability for a school district in circumstances where certain school district agents or employees engage in willful, reckless, or grossly negligent conduct causing injuries as a result of acts or omissions in rendering, or failing to render, emergency medical treatment. 20-A M.R.S.A. § 4009(4).

34. Defendant owed Plaintiffs a duty to adopt and implement the health services plan recommended by J.D.'s treating physician and adopted by the IEP Team. Defendant owed Plaintiffs a duty to ensure that its staff and administrators were properly trained to administer the Plan (i.e., inject liquid medication into J.D.'s mouth). In addition, Defendant's school nurse had a duty to coordinate the health services for the unit's students, including J.D.

[2] Plaintiffs filed a Notice of Claim pursuant to 14 M.R.S.A. § 8107 with RSU #34 on or about February 27, 2012.

35. Defendant breached its duty of care through its failure to adopt and implement a reasonable health services plan and through the school nurse's failure to coordinate such health services required by J.D. Such breach amounts to gross negligence and/or reckless conduct.

36. Defendant further breached its duty of care by failing to render basic emergency medical treatment to J.D. during her seizures in May 2011 and October 2011 and by failing to call 911 on each occasion. Such breach amounts to gross negligence and/or reckless conduct.

37. As a direct and proximate result of Defendant's negligence, J.D. unnecessarily suffered prolonged seizures which could and should have been curtailed by the implementation of her physician-recommended health plan, and as a result, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand judgment against Defendant for such damages as shall be reasonable and such legal and equitable relief as the Court may deem just, including an award of reasonable attorneys fees, together with interest and costs.

COUNT IV
Negligent Supervision

38. Plaintiffs re-allege Paragraphs 1-36 and incorporate them herein by reference.

39. J.D. is a child who maintains a "special relationship" with Defendant in accordance with section 315(b) of the Restatement (Second) of Torts and Maine common law.

40. Defendant owes Plaintiffs a duty to exercise reasonable care and to control the conduct of its agents and employees to prevent them from causing harm and/or to ensure that students are protected from harm due to acts or omissions of Defendant's agents and employees.

41. Defendant knew or had reason to know that it had at all material times the ability to control its agents and employees, and knew or should have known of the necessity and opportunity for exercising such control.

42. Defendant breached its duty of care through its failure to adopt and implement a reasonable health services plan and through the school nurse's failure to coordinate such health services required by J.D. and through its failure to properly supervise its agents and employees in carrying out their duties. Such breach amounts to negligent supervision of employees.

43. As a direct and proximate result of Defendant's negligent supervision, J.D. unnecessarily suffered prolonged seizures which could and should have been curtailed by the implementation of her physician-recommended health plan, and as a result, Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand judgment against Defendant for such damages as shall be reasonable and such legal and equitable relief as the Court may deem just, including an award of reasonable attorneys fees, together with interest and costs.

Dated: June 25, 2012

Respectfully submitted,

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